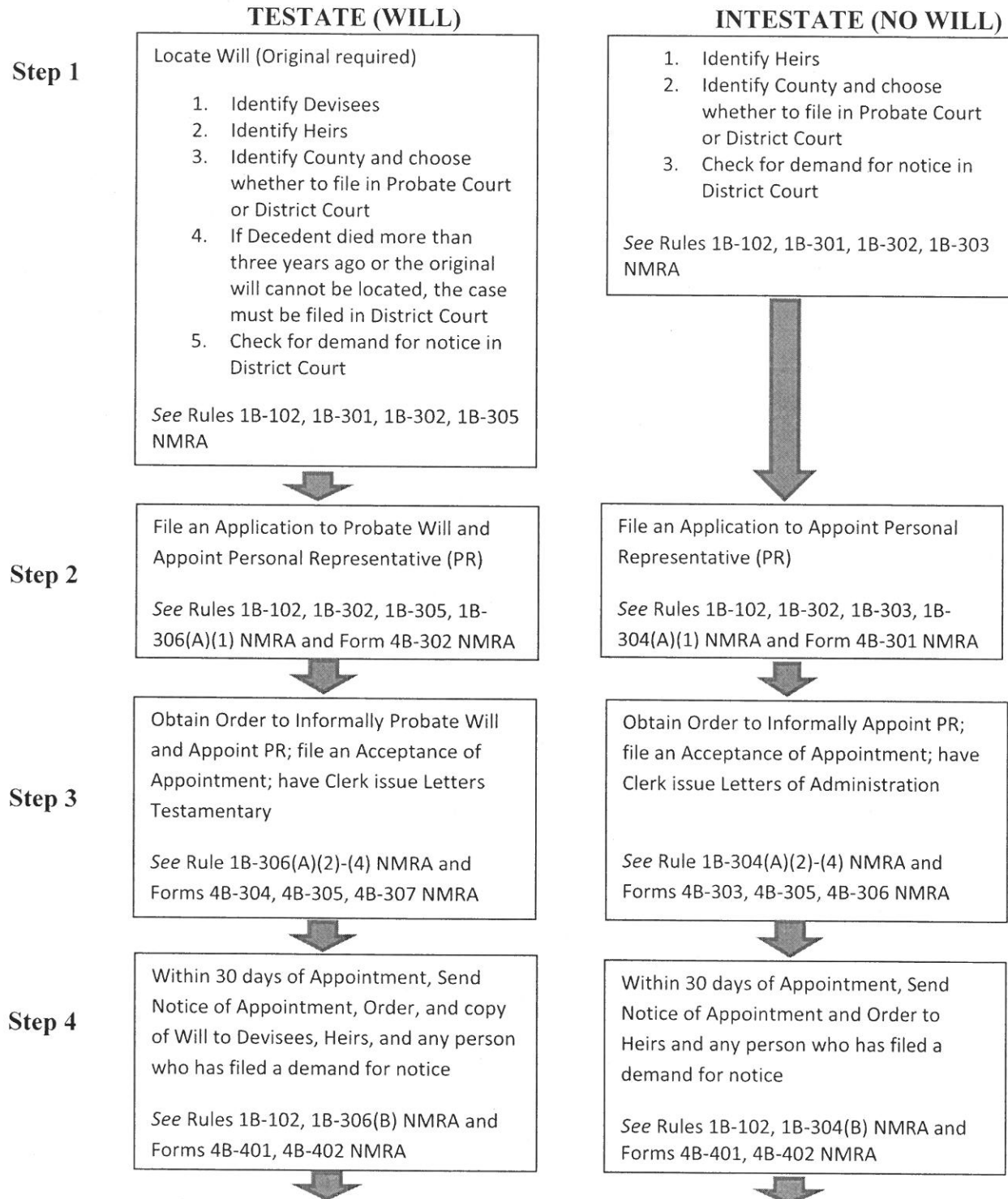


**4B-101. Opening and closing a probate court case (Flow chart).**

**OPENING AND CLOSING A PROBATE COURT CASE**



## TESTATE (WILL)

## INTESTATE (NO WILL)

### Step 5

Decide whether to Notify Creditors

If Creditors will be notified,

- (a) send notice,
- (b) publish notice, OR
- (c) both

See Rules 1B-102, 1B-305, 1B-306(C)  
NMRA and Form 4B-501 NMRA

Decide whether to Notify Creditors

If Creditors will be notified,

- (a) send notice,
- (b) publish notice, OR
- (c) both

See Rules 1B-102, 1B-303, 1B-304(C)  
NMRA and Form 4B-501 NMRA

### Step 6

Collect/Inventory Assets of the Decedent,  
Value Assets (within 3 months of  
appointment), and Determine Debts of  
the Decedent

Inventory does not have to be filed with  
the court

See Rules 1B-305, 1B-306(D) NMRA and  
Form 4B-601 NMRA

Collect/Inventory Assets of the Decedent  
and Value Assets (within 3 months of  
appointment), and Determine Debts of  
the Decedent

Inventory does not have to be filed with  
the court

See Rules 1B-303, 1B-304(D) NMRA and  
Form 4B-601 NMRA

### Step 7

Pay the Family Allowance (\$30,000) and  
Personal Property Allowance (\$15,000) if  
required

See Rules 1B-102, 1B-305, 1B-306(E)  
NMRA

Pay the Family Allowance (\$30,000) and  
Personal Property Allowance (\$15,000) if  
required

See Rules 1B-102, 1B-303, 1B-304(E)  
NMRA

### Step 8

Pay costs and expenses of administration

See Rules 1B-102, 1B-305, 1B-306(F)(1)  
NMRA

Pay costs and expenses of administration

See Rules 1B-102, 1B-303, 1B-304(F)(1)  
NMRA

### Step 9

Pay Creditors or Dispute Claims

See Rules 1B-102, 1B-305, 1B-306(F)(2)-  
(4) NMRA

Pay Creditors or Dispute Claims

See Rules 1B-102, 1B-303, 1B-304(F)(2)-  
(4) NMRA

If you did not deal with Creditors, you  
should wait a year from date of death to  
distribute assets, or you may owe unpaid  
Creditors

See Rule 1B-306(F)(2) NMRA

If you did not deal with Creditors, you  
should wait a year from date of death to  
distribute assets, or you may owe  
unpaid Creditors

See Rule 1B-304(F)(2) NMRA

**Or**

If you published notice to Creditors, sent notice to known Creditors, and paid all Creditors with allowed claims, and if the time for Creditors to make their claims has elapsed, you may distribute assets

See Rules 1B-305, 1B-306(C)(1) NMRA

**Or**

If you published notice to Creditors, sent notice to known Creditors, and paid all Creditors with allowed claims, and if the time for Creditors to make their claims has elapsed, you may distribute assets

See Rules 1B-303, 1B-304(C)(1) NMRA

**Step 10**

Prepare an Accounting of Administration, which does not have to be filed with the court, send the Accounting to Devisees and those who filed a demand for notice, and distribute remaining assets to Devisees

See Rules 1B-102, 1B-306(H)(1) NMRA and Form 4B-602 NMRA

Prepare an Accounting of Administration, which does not have to be filed with the court, send the Accounting to Heirs and those who filed a demand for notice, and distribute remaining assets to Heirs

See Rules 1B-102, 1B-304(H)(1) NMRA and Form 4B-602 NMRA

**Step 11**

Close probate and estate when you meet the requirements in the Verified Statement

See Rule 1B-306(H)(2), (3) NMRA and Forms 4B-701, 4B-702 NMRA

Close probate and estate when you meet the requirements in the Verified Statement

See Rule 1B-304(H)(2), (3) NMRA and Forms 4B-701, 4B-702 NMRA

[Adopted by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

**1B-101. Scope of rules; probate court jurisdiction; title; citation form.**

A. **Scope.** These rules govern procedures in all informal probate proceedings in the probate courts of New Mexico. While probate cases may also be opened in district court, these rules specifically govern probate cases opened in the county probate courts. The rules shall be construed and enforced to ensure the prompt and efficient resolution of probate proceedings. Probate courts shall make no other rules to govern the conduct of probate proceedings. If no procedure is specifically prescribed by rule or statute, a probate court may proceed in any lawful manner not inconsistent with these rules or the Probate Code.

B. **Probate court jurisdiction.**

(1) In uncontested, informal probate proceedings, all relevant information may be considered by the probate court.

(2) A probate case shall be transferred to district court in accordance with Rule 1B-701 NMRA if

- (a) a formal appointment of personal representative is requested;
- (b) a formal closing of the estate or administration is required by the Probate Code or requested by any interested party;
- (c) a contest arises as to the administration of an estate or probate of a will;
- (d) a determination of testacy or heirship is requested by any interested party;
- (e) a hearing is required to determine a matter involving the estate or the administration of an estate; or
- (f) transfer is requested by any interested party or ordered by the probate judge.

C. **Title.** These rules shall be known as the Probate Court Rules.

D. **Citation form.** These rules shall be cited by set and rule number of the New Mexico Rules Annotated, "NMRA," as Rule 1B-\_\_\_ NMRA.

[Approved by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

## **1B-102. Probate definitions.**

A. **General.** The following is a list of simplified definitions of certain legal terms that you, as the personal representative, may need to understand in your probate action. Under certain circumstances you may need to understand more than the simplified definitions listed below. In those cases, you may need to consult a lawyer or review the New Mexico law to more fully understand the terms listed below. Section 45-1-201 NMSA 1978 also includes definitions of terms used in the Uniform Probate Code (Probate Code).

“NMSA 1978” refers to the New Mexico Statutes Annotated 1978, which is the official compilation of New Mexico statutory law. The first number listed is the chapter, the second number listed is the article, and the third number is the specific section of law enacted by the Legislature. The Probate Code is published in the NMSA 1978 as Chapter 45 NMSA 1978. “NMRA” refers to the New Mexico Rules Annotated, which contains rules, forms, and jury instructions of the New Mexico courts. Probate forms are included in the NMRA and are also available electronically through the New Mexico Supreme Court website. Additional information may be obtained from your county probate court.

B. **Definitions.** As used in the Probate Court Rules, Rules 1B-101 to 1B-701 NMRA, and the Probate Court Forms, Forms 4B-101 to 4B-1001 NMRA

(1) “accounting” means any written statement that sets forth accurately the assets of an estate, the liabilities of an estate, and the receipts and disbursements for an estate;

(2) “administration of an estate” means to go through the process of managing and settling the estate of a decedent. This usually involves the following four steps:

(a) collecting and valuing the assets of an estate;

(b) paying the family and personal property allowances;

(c) paying the costs and expenses of administration and the valid debts of the estate, including all taxes; and

(d) distributing the remainder of the estate to those who are entitled to it;

(3) “applicant” means a person who makes a written request to the probate court for an informal probate or appointment;

(4) “application” means a written request to the probate court for an informal probate or appointment. If you need more information on an application, *see* Section 45-1-201(A)(2) NMSA 1978;

(5) “beneficiary” is a person who is given a gift (devise) by a will. The Probate Code uses a different word, “devisee,” to mean the same thing. The forms use the word “devisee” rather than “beneficiary” because the Probate Code uses “devisee.” If you need more information on a beneficiary, *see* Section 45-1-201(A)(4) NMSA 1978;

(6) “bond” means a financial security provided to the court by the personal representative and a bonding company to ensure that the personal representative of the estate faithfully does the job of personal representative. A bond is usually not required in an informal probate proceeding. However, a bond may be required if the will requires it, or if a person with an interest in the estate requests the court to require it and the court orders that a bond be posted. If you need more information on bonds, *see* Sections 45-3-601 and 45-3-603 to 45-3-606 NMSA 1978;

(7) “claim” means a debt of the decedent that can arise before or after the death of the decedent, including the last medical bills and funeral costs;

(8) “claimant,” also called “creditor,” means a person who is making a claim;

(9) “creditor” means a person to whom a debt is owed. The debt might be owed by the decedent or the estate, also called the “debtor.” In order to collect against an estate, the creditor files a “claim”;

(10) “decedent” means the person who has died and whose will is being probated or whose estate is being administered;

(11) “descendant” means all of the children, grandchildren, great-grandchildren, etc., of a decedent. If you need more information on a descendant, *see* Section 45-1-201(A)(9) NMSA 1978;

(12) “demand for notice” means a written document filed in the district court where a probate is or should be filed requesting notice of any order or filing pertaining to a decedent’s estate. The document must state the name of the decedent, the nature of the filing person’s interest in the decedent’s estate, and the filing person’s address or the address of the filing person’s lawyer. You, as the personal representative, filing an action in probate court, must contact the district court clerk in the county where the decedent was domiciled and ask if any person has filed a demand for notice relating to the decedent’s estate. If someone has filed a demand for notice, you must send a copy of everything you file and every order the judge signs to the person who has demanded notice. If you need more information on a demand for notice, *see* Section 45-3-204 NMSA 1978;

(13) “devise,” if used as a noun, means a gift of land (also called “real property”) or other assets (also called “personal property”) given by a will. If used as a verb, “devise” means to give a gift by a will of land or other assets. If you need more information on a devise, *see* Section 45-1-201(A)(10) NMSA 1978;

(14) “devisee” means a person listed in a will to receive assets from an estate. A common word for “devisee” is “beneficiary.” The forms use the word “devisee” rather than “beneficiary” because the Probate Code uses “devisee.” If you need more information on a devisee, *see* 45-1-201(A)(11) NMSA 1978;

(15) “distributee” means any person who receives property from a decedent who is not a creditor or purchaser. If you need more information on a distributee, *see* Section 45-1-201(A)(12) NMSA 1978;

(16) “domicile” means the last place the decedent had a true, fixed home, in a permanent establishment to which the decedent intended to return after an absence, and it is the place where the decedent voluntarily fixed his or her home with the intention of making it permanent;

(17) “estate” means all property of the decedent that is subject to the Probate Code. For the purposes of probate, an estate generally does not include property that passes automatically to a listed beneficiary, such as land held as joint tenants, land subject to transfer on death deeds, life insurance proceeds, payable on death accounts, transfer on death accounts, or retirement benefits that have a beneficiary designation. If you need more information on an estate, *see* Section 45-1-201(A)(15) NMSA 1978;

(18) “family allowance” means an allowance of thirty thousand dollars (\$30,000) from the decedent’s estate to which the decedent’s surviving spouse is entitled. If there is no surviving spouse, then the family allowance is payable to the decedent’s minor and dependent children. This allowance is exempt from and has priority over all claims against the estate. The family allowance must be paid if the estate has sufficient assets. *See* Section 45-2-402



NMSA 1978;

(19) “fiduciary” includes a person serving as a personal representative, who acts primarily for another person’s benefit in matters connected with that role. A fiduciary is held to the highest degree of good faith in performing the duties of the fiduciary. A personal representative is a fiduciary. *See* Section 45-1-201(A)(17) NMSA 1978 for the definition of “fiduciary”;

(20) “formal proceeding” means a proceeding that must be conducted before a district court judge with notice to interested persons;

(21) “heirs” means those persons who are entitled to the property of the decedent if the decedent dies intestate. The priority of the people who are entitled to the property is listed in Sections 45-2-101 to 45-2-107 NMSA 1978;

(22) “informal proceeding” means a proceeding commenced before the probate court without prior notice to interested persons for probate of a will or appointment of a personal representative, except as provided in Section 45-3-306 NMSA 1978;

(23) “intestate” means to die

- (a) without leaving a will;
- (b) without leaving a valid will; or
- (c) with an incomplete will;

(24) “notice” or “giving notice” means the process of sending written information to people interested in the estate telling them about events occurring that relate to the estate or administration of the estate. *See also* the specific requirements for notice to creditors in Paragraph (B)(25) below. The courts operate under a principle that people are entitled to “notice and an opportunity to be heard.” This means that people are entitled to know what is happening in a case and are then given an opportunity to tell a judge what that person wants the judge to know about a case. When you complete the notice requirements in a case, you have told people about the important events happening in a case. You will meet your notice obligations if you mail a copy of everything that is filed with the court on the same day the document is filed with the court to the correct address for the following:

- (a) all the heirs or devisees of an estate;
- (b) persons who have or may have an interest in the estate of the decedent;
- (c) anyone who asks for notice; and
- (d) anyone who has filed a demand for notice.

*See* Sections 45-3-705, 45-3-306, and 45-3-310 NMSA 1978;

(25) “notice to creditors” or “giving notice to creditors” means notifying creditors that you are in the process of probating the estate. If you choose to give notice to creditors, you may publish notice in the newspaper, deliver written notice by mail or other delivery, or both. *See* Section 45-3-801 NMSA 1978;

(26) “personal representative” means the person appointed by the court to administer the estate as defined in Paragraph (B)(2) above. This person may be called an “executor,” an “executrix,” or an “administrator” in a will;

(27) “personal property” means property that is not land, real estate, or real property. Examples of personal property include bank accounts, stocks, bonds, insurance policies, pension plans, jewelry, furniture, and motor vehicles. Some personal property may have a designation regarding who receives the property after death (a “beneficiary designation”) and is

not governed by a statute of distribution or by a will. A common example is an IRA or pension plan;

(28) “personal property allowance” means an allowance valued at fifteen thousand dollars (\$15,000) or less from the decedent’s estate in household furniture, automobiles, furnishings, appliances, and personal effects, to which the decedent’s surviving spouse is entitled. If the value of such items is less than the personal property allowance of fifteen thousand dollars (\$15,000), the value of the personal property allowance shall be paid from other assets to make up any deficiency. If there is no surviving spouse, then the personal property allowance is payable to the decedent’s children who are devisees under the will or who are entitled to a share of the estate under Section 45-2-302 NMSA, or if there is no will, the allowance is payable to the decedent’s intestate heirs. This allowance is payable in all events, if the estate has sufficient assets remaining after the family allowance has been paid. *See* Section 45-2-403 NMSA 1978;

(29) “probate” technically means the court procedure by which a will is proved to be valid or invalid. Common usage of this term now means all matters relating to the administration of an estate;

(30) “probate case” means a court case originally commenced for one or more of the following purposes:

- (a) to informally administer a decedent’s estate;
- (b) to informally appoint a personal representative or special administrator; or
- (c) to provide for proof of authority for a domiciliary foreign personal representative;

(31) “Probate Code” means the Uniform Probate Code, Chapter 45 NMSA 1978;

(32) “real property” includes land, houses, farms, ranches, leases, minerals, water rights, and timber rights;

(33) “revoked,” when used with these forms, means a will or other document that the decedent has canceled. If a will is revoked, it has no effect;

(34) “testate” means to die leaving a valid will;

(35) “testator” means someone who has made a will or someone who dies leaving a valid will. A “testatrix” is a female testator, although this term is no longer used in the Probate Code;

(36) “unrevoked,” when used in these forms, means a will or other document that the decedent has not canceled;

(37) “venue” means the place where the case should be filed. Generally, the case should be filed in either the probate court or the district court in the county where the decedent was domiciled at the time of death, or, if the decedent did not live in New Mexico, the probate court or the district court in the county where the decedent owned real property. If you need more information on venue, *see* Section 45-3-201 NMSA 1978; and

(38) “will” means a document prepared and executed according to certain formalities that usually describes the distribution of the decedent’s probate assets upon death. A will also typically designates a personal representative and may appoint a guardian for minor children. A will is sometimes referred to as “last will and testament.” If you need more information on a will, *see* Section 45-1-201(A)(57) NMSA 1978.



[Approved, effective September 15, 2000; 4B-002 recompiled and amended as 1B-102 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

### **1B-303. General instructions for probates (*no will*).**

A. **Determine if there is a will.** First, determine whether the decedent had a will. Different forms are used if there is a will (meaning the person died “testate”) and if there is not a will (meaning the person died “intestate”). This set of instructions should be used if you have not been able to find a will signed by the decedent.

B. **Overview of steps.** There are essentially the following eight steps to an informal probate:

- (1) file an application to start the process and have the court appoint you as personal representative;
- (2) within thirty days of your appointment send out notice to the decedent’s heirs that you have been appointed as personal representative and that a probate action is in process;
- (3) during the first year following the decedent’s death, if you want to shorten the time period that creditors have to make claims, you may notify creditors that you are in the process of probating the estate by publishing a notice in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice;
- (4) gather, value, and list the assets of the estate and determine the debts of the estate;
- (5) distribute the family and personal property allowances;
- (6) pay the costs and expenses of administration and the valid debts of the estate, including all taxes;
- (7) distribute the remaining assets of the estate to the decedent’s heirs; and
- (8) close the estate and probate action.

C. **Completion and filing of forms.**

(1) ***Print or type information.*** Please print or type the information on all forms. You will want to keep copies of all documents that you file in the court file and orders that the judge signs in the case. All forms and other papers filed with the court shall be clearly legible and printed on one side of the page on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size.

(2) ***Copies you will need.*** Remember to take with you an original and as many copies as you want to have when you file papers or take an order to the judge for the judge’s signature. The court clerk will stamp each copy as “Endorsed” (which shows it is a copy of the original filed document), but only at the time of filing. If you do not get an endorsed copy at the time of filing, you will likely have to pay a fee for a copy later.

(3) ***Required filing fee.*** There is a filing fee that you must pay to open the case. In very limited situations, you may apply to the judge for a waiver of the filing fee. *See* Forms 4B-201 and 4B-202 NMRA, Affidavit of poverty and indigency and Order allowing free process.

[Approved, effective September 15, 2000; as amended by Supreme Court Order No. 07-8300-005, effective March 1, 2007; 4B-011 recompiled and amended as 1B-303 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or after December 31, 2018.]

**1B-304. Explanation of forms and how to complete; specific steps (*no will*).**

A. **Step 1. Start the process and have the court appoint you as personal representative.** In order to begin the probate process, you must file the following forms in the probate court in the county where the decedent was domiciled, or where that person owned real property. For Step 1 use Forms 4B-301, 4B-303, 4B-305, and 4B-306 NMRA.

(1) ***Form 4B-301 NMRA, Application for informal appointment of personal representative (no will) ("Application").*** See Sections 45-3-203 and 45-3-301 NMSA 1978.

This form generally shows the judge the following:

- (a) the case is ready to be probated;
- (b) the case is appropriate for probate court; and
- (c) you are the appropriate person to act as personal representative.

You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. Before you file the form, you must contact the district court clerk in the district where the decedent was domiciled or owned real property and ask if anyone has filed a demand for notice. If someone has filed a demand for notice, that person is entitled to get a copy of all documents you file in the case, including the application and all orders signed by the judge.

If you were married to the decedent and are not disqualified to act as personal representative, you have the first priority to act as personal representative. If you were not married to the decedent and you are not an heir or are not the only heir, each of the other heirs, including the decedent's spouse, if any, must consent to your appointment as personal representative. For example, if you have two brothers, your mother is no longer living, and you want to probate your father's estate, each of your brothers must sign the consent section of Form 4B-301 NMRA, Application. If any of the heirs do not consent to your appointment as personal representative, a formal proceeding in district court is required. See Section 45-3-203 NMSA 1978. If a formal proceeding is required you may not use the forms and you should seek the advice of a lawyer.

(2) ***Form 4B-303 NMRA, Order of informal appointment of personal representative (no will).*** You must submit Form 4B-303 NMRA, Order of informal appointment of personal representative (*no will*), for the judge's consideration. If the judge approves the application, the judge will sign this order. See Section 45-3-308 NMSA 1978. The Order of informal appointment of personal representative (*no will*) serves the following purposes:

- (a) appoints you as the personal representative; and
- (b) allows the probate to begin once you have accepted your appointment and letters of administration have been issued to you.

(3) ***Form 4B-305 NMRA, Acceptance of appointment as personal representative (no will) (will).*** This form proves that you agree to follow the law when you act as personal representative. You must sign and date this form and affirm in writing under penalty of perjury under the laws of the State of New Mexico that the statements are true and correct. You may submit this form at the same time you submit your application and order. After the judge has signed and filed the Order of informal appointment of personal representative (*no will*), Form 4B-303 NMRA, the court will file your acceptance and issue Letters of administration (*no will*), Form 4B-306 NMRA, to you.

(4) ***Form 4B-306 NMRA, Letters of administration (no will).*** After the judge has signed and filed the order and the court has filed your acceptance, you should complete

this form and submit it to the court clerk to issue. This form has the following two general purposes:

- (a) to officially begin your appointment as personal representative; and
- (b) to prove to others that the judge has appointed you as personal representative and that you are qualified to make decisions about the decedent's estate.

You may want to have several copies of the Letters of administration (*no will*), Form 4B-306 NMRA. This is the document that shows people that you are the personal representative. You might even consider getting several certified copies of this document. A "certified copy" is a document on which the court clerk formally indicates that it is a true and correct copy of the original. There is typically a charge to get a certified copy.

**B. Step 2. Send out notice that you have been appointed as personal representative and that a probate action is in process.** See Section 45-3-705 NMSA 1978. For Step 2 use Forms 4B-401 and 4B-402 NMRA.

(1) **Form 4B-401 NMRA, Notice of informal appointment of personal representative.** Once the judge has appointed you as personal representative, you must send out Form 4B-401 NMRA, Notice of informal appointment of personal representative, within thirty (30) days to the heirs of the decedent and any person who has filed a demand for notice as described in Paragraph (A)(1) of this rule.

(2) **Form 4B-402 NMRA, Proof of notice.** Once you have completed the mailing, complete and file Form 4B-402, Proof of notice. See Section 45-3-705(D) NMSA 1978.

**C. Step 3. Notify creditors that you are in the process of probating the estate (optional).** During the first year following the decedent's death, if you want to shorten the time period that creditors have to make claims, you may notify creditors that you are in the process of probating the estate by publishing notice to creditors in the newspaper or mailing or delivering written notice to creditors. You may also choose to notify creditors by both means, publishing and providing written notice. See Sections 45-3-801, 45-3-802, and 45-3-803 NMSA 1978. For Step 3 use Form 4B-501 NMRA. Do not pay any claims until you read Steps 4-7 below.

(1) **Form 4B-501 NMRA, Notice to creditors by publication and notice to creditors by written notice (mailing or other delivery).** A creditor has one (1) year from the date of the decedent's death to submit a claim unless you publish notice in a newspaper. If you publish notice in the newspaper in the county where the probate proceeding is filed that notifies creditors to submit their claims, the time period is shortened from one (1) year after death to four (4) months after the first day you publish notice. In order to shorten the time period for claims, notice to creditors must be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county. If you publish the notice to creditors in the newspaper for three (3) consecutive weeks, the newspaper will give you an affidavit of publication that indicates that the notice was published. Give the affidavit to the probate court clerk for filing. The only method for shortening the time to known creditors or to those creditors that can be reasonably ascertained is to provide such creditors with actual written notice.

If you know who the creditors are, you may deliver written notice to known creditors. Form 4B-501 NMRA provides the option of delivering written notice to known creditors in addition to providing notice by publication. If notice is published and written notice is also provided, a creditor has the greater of four (4) months from the date of first publication or sixty (60) days from the mailing or other delivery of the notice to present its claim.

Claims that have not been presented within one (1) year of the decedent's death shall not

be paid.

(2) **Secured creditors.** Secured creditors are creditors of the decedent that have a mortgage, deed of trust, secured loan, or security interest in property of the decedent, such as a lien on a vehicle, for example. *See* Sections 45-1-109 and 45-3-104(B) NMSA 1978. Consider seeking the advice of a lawyer with respect to secured creditors of the decedent.

D. **Step 4. Prepare an inventory, meaning gather, value, and list the assets of the estate, and determine the debts of the estate.** For Step 4 use Form 4B-601 NMRA, Inventory. Within ninety (90) days of your appointment as personal representative, you must prepare an inventory of the assets of the estate. *See* Sections 45-3-706 to 45-3-708 NMSA 1978. Form 4B-601 NMRA, Inventory, is provided as a model. The inventory must list the items owned by the decedent in reasonable detail and give the estimated value on the date of death of the decedent for each item. It must also give the type and amount of any debt owed for the item, such as debt secured by a lien or mortgage. You must mail the inventory to interested people who request it. *See* Section 45-3-706 NMSA 1978. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

E. **Step 5. Distribute the family and personal property allowances.** This Step, along with Steps 6 and 7, are at the heart of the probate process, and you should ensure that they are properly completed. In doing so, you should seriously consider consulting with a lawyer knowledgeable in the probate process. Additionally, check your local library for available resources.

(1) **Distribute the family allowance.** You must pay the family allowance of thirty thousand dollars (\$30,000) to the surviving spouse. Unless the surviving spouse affirmatively waives the right to the family allowance, the spouse is entitled to the family allowance. If there is no surviving spouse, you must pay the family allowance to each minor child and to each dependent child of the decedent. The family allowance is to be divided equally among all the minor and dependent children. *See* Section 45-2-402 NMSA 1978.

(2) **Distribute the personal property allowance.** After payment of the family allowance, you must distribute the personal property allowance, in a value not to exceed fifteen thousand dollars (\$15,000), to the surviving spouse from household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the personal property allowance must be distributed to the decedent's intestate heirs. If the value of these items is less than the personal property allowance of fifteen thousand dollars (\$15,000), the remaining value of the personal property allowance shall be paid from other assets to make up any deficiency, if there are assets remaining after you pay the family allowance. *See* Section 45-2-403 NMSA 1978.

F. **Step 6. Pay the costs and expenses of administration and the valid debts of the estate, including all taxes.**

(1) **Pay costs and expenses of administration.** After the family allowance and personal property allowance are paid, you should next pay the costs and expenses of administration. Those costs and expenses typically include any filing fees you have paid, payment for your time spent working on estate matters, and payment of anyone you employed to assist you with estate matters. There is no set hourly rate for personal representative fees, and you should consider consulting with a lawyer to determine an appropriate, reasonable fee for your services.

(2) **Pay remaining claims and debts of the estate, including all taxes.** After



you have paid the allowances and costs and expenses of administration, you must pay the remaining valid claims and debts of the estate. If the estate does not have sufficient funds to pay all of the valid claims and debts owed, you must pay the claims and debts in the order approved by law. *See* Section 45-3-805 NMSA 1978. If there are sufficient assets in the estate and you, as the personal representative, fail to pay the valid claims and debts of the estate, including federal and state taxes, you may be personally liable for any valid claims and debts that remain unpaid.

(3) **Disputing debts.** If a creditor makes a claim that you do not think is valid, there is a specific process for objecting to the claim with specific time deadlines. *See* Section 45-3-806 NMSA 1978. In this case, it is best to seek the advice of a lawyer, because you may be forced to pay an invalid claim if you do not go through the process correctly.

(4) **Exception to requirement to pay debts.** There is an exception to the requirement that the personal representative pay the valid debts of the estate. This is when the estate is considered a "small estate." To determine if the estate you are probating is a small estate, *see* Sections 45-3-1203 and 45-3-1204 NMSA 1978 and Paragraph (H)(3) of this rule. It is best to seek a lawyer's advice about whether an estate qualifies under this exception. Use Form 4B-702 NMRA.

G. **Step 7. Distribute the remaining assets of the estate to the decedent's heirs.** When you have paid all of the decedent's debts, you shall distribute the assets that are left to the heirs of the decedent. The heirs and the proper share that each receives are described in Sections 45-2-101 to 45-2-107 NMSA 1978. Distribution of real estate (land) requires a deed from the personal representative to the distributee. If you have any question about the form of a deed or how to prepare a deed, seek a lawyer's advice.

H. **Step 8. Close the estate and probate action.** For Step 8 use Forms 4B-602 and 4B-701 NMRA. Once you have completed all of your work as personal representative and at least six (6) months have passed since the appointment of the personal representative if notice to creditors is given, or one (1) year has passed if no notice to creditors is given, you may close the estate. *See* Section 45-3-1003 NMSA 1978. In order to do this you must first do the following:

(1) **Form 4B-602 NMRA, Accounting.** Send an accounting of everything that you did in your administration of the estate to all of the decedent's heirs and those persons who filed a demand for notice. Form 4B-602 NMRA, Accounting, is provided as a model. The accounting should list all assets and liabilities of the decedent, receipts and disbursements made by the personal representative, and remaining assets of the estate. The list of assets and cash into the estate should equal a list of payments and distributions from the estate. The list of payments and distributions includes payments to creditors, payments for administrative expenses, and distributions to heirs. Unless ordered by the court to file this document, you are not required to do so, and you are free to keep the information private and out of the public record.

(2) **Form 4B-701 NMRA, Verified closing statement of the personal representative.** Complete and mail a copy of Form 4B-701 NMRA, Verified closing statement of the personal representative, to all heirs and to any creditors or other claimants whose claims are neither paid nor barred, and file the verified closing statement with the court.

Your appointment as personal representative will automatically terminate in one (1) year if there are no pending proceedings involving you as personal representative.

(a) **Taxes.** You should ensure that you have complied with all state and federal tax requirements. Closing of the estate with the court does not resolve pending matters with any tax authorities. Contact a tax advisor, the Internal Revenue Service, or the New



Mexico Taxation and Revenue Department about this issue.

(b) *Bond.* If you have given the court a lien on your property instead of filing a bond as personal representative and a year has passed since you filed the verified closing statement of the personal representative that closed the estate, you may wish to obtain a release of the property lien. *See* Section 45-3-1007 NMSA 1978.

(3) *Form 4B-702 NMRA, Verified small estate closing statement of the personal representative.* When the value of the entire estate, less liens and encumbrances, does not exceed the family allowance, personal property allowance, costs and expenses of administration, reasonable necessary medical and hospital expenses of the last illness of the decedent, and reasonable funeral expenses, the estate is considered a small estate. There are two steps you must take to close a small estate.

(a) *Distribute assets.* Distribute the estate's assets to the persons entitled thereto. You may do this without giving notice to creditors. *See* Section 45-3-1203 NMSA 1978.

(b) *Prepare closing statement.* Complete and mail a copy of Form 4B-702 NMRA, Verified small estate closing statement of the personal representative, to anyone entitled to a distribution from the estate and to all creditors or other claimants whose claims are not paid or barred, including all taxing authorities. Also send a copy of the accounting for the estate to anyone entitled to a distribution from the estate whose interests are affected by the accounting. File the Verified small estate closing statement of the personal representative, Form 4B-702 NMRA, with the court. *See* Section 45-3-1204 NMSA 1978.

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